

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

KUNDE ENTERPRISES, INC.,

Plaintiff,

v.

NATIONAL SURETY CORPORATION,

Defendant.

CASE NO. 4:19-cv-06636-JSW

**[PROPOSED] ORDER GRANTING  
PLAINTIFF KUNDE ENTERPRISES,  
INC.'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Hearing Date: May 6, 2022

Time: 9:00 a.m.

Courtroom: 5

Pre-Trial Conference Date: March 14, 2022

Trial Date: May 16, 2022

On February 18, 2022, Plaintiff Kunde Enterprises, Inc. (“Kunde”) filed a Motion for Partial Summary Judgment (“Motion”), pursuant to Federal Rule of Procedure 56(a), seeking summary judgment against Defendant National Surety Corporation (“National Surety”) on Kunde’s First Cause of Action for a declaration that National Surety has a duty to indemnify Kunde for the full amount of its loss for smoke tainted wine resulting from the 2017 wildfires, and on Kunde’s Second Cause of Action that National Surety has breached that duty. The Court, having considered the Motion, all supporting and opposition papers, and all argument by the parties and their counsel, hereby **GRANTS** Kunde’s Motion.

The Court finds that there is no material dispute of fact requiring a trial on any issue raised in Kunde’s Motion. The Court further finds that National Surety has a duty to pay Kunde for its losses due to the smoke-tainted wines under the “all risks” commercial property insurance policy (the “Policy”) at issue, as Kunde has met its *prima facie* burden, and National Surety has failed to prove that any exclusion or sublimit applies. Finally, the Court finds that National Surety breached its duty to pay Kunde for its losses as, to date, it has paid only \$1 million toward Kunde’s wine losses. Consequently, National Surety must pay Kunde for the losses it has incurred in connection with the smoke-tainted wines—\$6,047,853.38—plus prejudgment interest on all unpaid amounts at 10% per annum under California Civil Code § 3289(b), minus the \$1,000,000 that National Surety previously paid toward Kunde’s claim.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2022

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Honorable Jeffrey S. White  
United States District Judge